IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4581 OF 1993

Yeshwantprasad Popular
Education Society, Barsi,
having office at 20, Kasba,
Barsi, Solapur 413 411. .. Petitioner.
Vs
1. The State of Maharashtra
Education and Youth Services
Department, Mantralaya
Mumbai. ..
2. The Director of Education
Maharashtra State, Central
Building, Pune 411 001 ..
3. The Education Officer,
Zilla Parishad, Solapur .. Respondents

Shri K.Y.Mandlik for the petitioner.
Mrs.M.P.Thakur AGP for the State.

CORAM : V.G.PALSHIKAR,AG.C.J.&
D.B.BHOSALE, J.

DATED : 5TH DECEMBER, 2005.

ORAl JUDGMENT (PER D.B.BHOSALE, J.)

. This petition is directed against two communications dated 13.7.1990 and 17.8.1990, send by respondent nos.2 and 1 respectively, addressed to the petitioner-institution by which the Government has denied its liability to pay 50% of the total backwages to Smt.S.D.Vaidya for the period from 14.7.1979 to 17.12.1989. The first communication dated 13.7.1990 was in reply to a letter of the petitioner dated 28.5.1990 by which the petitioner had submitted the claim of Rs.1,22,147/- to be paid

to Smt.Vaidya towards 50% of the total backwages for the aforestated period. The said payment was to be made in pursuance of the judgment of this Court dated December 13th and 14th, 1989 rendered in Writ Petition No.4091 of 1984 by which while allowing the writ petition Smt.Vaidya was held to be entitle to backwages to the tune of 50% of the total backwages which she had been entitled from the date of termination until the date of reinstatement. On receipt of the letter dated 13.7.1990 the petitioner-institution addressed a letter dated 17.8.1990 to respondent no.1. In reply to that letter once again the Government by their letter dated 17.8.1990 reiterated what had been stated in the earlier letter. It was further mentioned in the said letter that the liability to pay the backwages is of the petitioner-institution. The petitioner-institution was also directed, by the Government in the said letter, to make payment as per the judgment and order of this court dated 14.12.1989 forthwith failing which appropriate action was indicated against them.

2. It would be advantageous to reproduce the concluding paragraph 30 in the judgment and order dated 13/14th December, 1989 rendered in Writ Petition No.4091 of 1984, which reads thus:

> "30. The impugned order dated 18th of July 1977 terminating the services of the Petitioner is set aside and quashed holding that the said order is nonest and the proceedings of the enquiry are vitiated. The Petitioner is directed to get the relief of being reinstated forthwith with continuity of service as from the date of termination with the necessary consequential benefits that would be annexed to an order of reinstatement though with a qualification that it is prescribed and directed that the Petitioner shall be entitled to back wages only to the tune of 50 per cent of the total back wages which she would have been entitled to from the date of termination till the date of reinstatement."

3. It appears that since payment as directed in the judgment aforestated was not made to Smt.Vaidya, she filed contempt petiton No.109/90 contending that although she was reinstated in the post of a teacher on 19.12.1989, 50% of the total backwages as directed were not paid to her. The contempt petition was disposed of vide judgment and order dated 27th September, 1991. The operative part of the judgment reads thus:

> "(a). We direct that out of the liability of Rs.50,000/- undertaken by the respondents 1 and 2, they shall, subject to deductions on account of income-tax, provident fund and professional tax payable by the petitioner on the whole amount of 50% of back wages, deposit the balance amount in this Court within 15 days from the date of this order. The petitioner is entitled to claim spread over of his back wages during the period for which they are payable for the purpose of payment of income-tax upon the same. The respondents 1 and 2 shall at the time of depositing the amount in this Court certify

to this Court that the deductions as stated above have been made and have been credited to the appropriate authorities by them.

(b) As regards the balance amount of Rs.72,147/- the State Government is directed to deposit the said amount in this Court within one month from the date of this order and shall adjust the same in the non-salary grant payable to the school in question of the respondent no.1 for the years 1990-91 and 1991-92.

(c) The petitioner shall be entitled to withdraw the above amount deposited in this Court on his proper identification and after passing the receipt that all the dues payable to her as per the order of this Court dated 13/14th December 1989 are satisfied.

(d) It is made clear that the respondents 1 and 2 are free to the question as to whether the back wages paid to the petitioner are liable to be reimbursed by the State Government on account of 100% salary grant paid by it upon salaries of the teachers in the Secondary Schools.

(e) In view of the above arrangement, the learned counsel for the petitioner does not press this contempt petiton. Hence the contempt proceedings are dropped with liberty to the petitioner to file a fresh contempt petition, if necessary.

(f) Office to furnish certified copy to the parties on urgent basis."

4. It is against this backdrop the petitioner-institution has approached this Court by way of instant writ petition for quashing and setting aside the communications dated 13.7.1990 and 17.8.1990. Though no specific prayer is made seeking directions to the Government to make 50% of the total payment of the backwages it was orally submitted that

the respondent be directed to reimburse the payment made by the petitioner-institution to Smt.Vaidya in pursuance of the order passed by this Court.

5. Mr.Mandlik, learned counsel for the petitioners submitted that the petitioner-institution being an aided institution, the Government was liable to pay the backwages to Smt.Vaidya for the period from 14.7.1979 to 17.12.1989. The institution from time to time made correspondence with the Government requesting them to release the payment towards the backwages of Smt.Vaidya, however, the Government has failed and neglected to reimburse the amount paid to Smt.Vaidya. He invited our attention to the judgment of this Court dated 27.9.1991 in Contempt Petition and submitted that the question as to whether the backwages paid to the petitioner are liable to be reimbursed by the State Government on account of 100% salary grants paid by it upon salaries of the teachers in the secondary school was left open. On the other hand learned A.G.P. submitted that to pay the backwages as per directions of this Court was the liability of the petitioner-institution which had wrongly terminated the services of Smt.Vaidya and that the termination order was set aside by this Court. While effecting termination of Smt.Vaidya the petitioner did not follow the prescribed procedure

which ultimately resulted in setting aside the termination order by this Court and, therefore, the institution is not entitled to claim reimbursement as prayed for in this petition.

6. We perused the petition and annexures thereto as also reply affidavit filed by the respondent. It is true that the question as to whether the petitioner can claim reimbursement of the payment made by them to Smt.Vaidya in pursuance of the order passed by this Court was left open. However, the findings recorded by this Court in the judgment dated 13th/14th December, 1989 passed in Writ Petition No.4091/84 cannot be overlooked which records that the procedure adopted by the institution while conducting the enquiry and passing termination order in pursuance thereof was faulty and illegal and, therefore, the order of termination was set aside. This Court while doing so also took a note of the conduct of Smt.Vaidya and, therefore, directed backwages only to the tune of 50% of the total backwages which she was entitled for. The Government pays salary to the teachers directly through bank as per provisions of law and rules. It is not disputed that after termination of Smt.Vaidya a substitute was appointed in her place and the Government had paid salary to the said substitute directly through bank.

We, therefore, fail to understand as to how the institution is entitled for double grant for a single, sanctioned and approved, post of the Assistant Teacher. It was not disputed that the post which Smt.Vaidya was holding was subsequently filled in by the petitioner-institution by appointing some other teacher in her place and the salary grant for that post was paid to the said teacher. It is against this backdrop we are of considered view that the petitioner-institution cannot claim and is not entitled for reimbursement of the amount paid by them to Smt.Vaidya in pursuance of the order passed by this Court. Even deduction of Rs.72,127/- from the non-salary grants made by the Government which amount was paid by them to Smt.Vaidya pursuant to the orders passed in the Contempt Petition also cannot be faulted and, therefore, the prayer of reimbursement of that amount is also rejected. In the result the petition fails and is dismissed as such. No orders as to costs.

(D.B.Bhosale, J.) **(V.G.Palshikar,AG.C.J.)**